



**US Army Corps
of Engineers®**

PUBLIC NOTICE

APPLICATION FOR PERMIT

LOS ANGELES DISTRICT

Public Notice/Application No.: 200201129-CJF

Comment Period: December 23, 2002 through January 23, 2003

Project Manager: Corice J. Farrar (213) 452-3296 corice.j.farrar@usace.army.mil

Applicant

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Contact

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Attention: Patti Sexton

Location

The proposed project is located at the mouth of Prima Deshecha Channel and ocean outlet at Poche Beach, in the city of Dana Point, at the boundary with the city of San Clemente, Orange County, California (at: lat:33-26-26.9880 lon:117-38-38.0040).

Activity

In association with a proposed water quality package treatment plant located in the adjacent upland area, the County of Orange proposes to install a removable tidal barrier and diversion berm, and in-channel filters within Prima Deshecha Channel, a fully lined concrete channel. Additionally, the County proposes to perform grading on the beach to eliminate ponded water, i.e., a scour pool, located at the Poche Beach ocean outlet. Although the conditions at the outlet are continually altered by flow, tide, and surf, it is anticipated that the outlet will require some maintenance at least twice per calendar year (once after the rainy season, and once before the rainy season). The maintenance activities are being considered under a separate permit evaluation (Corps Reference No. 200200543-CJF).

Interested parties are hereby notified that an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawing(s). Interested parties are invited to provide their views on the proposed work, which will become a part of the record and will be considered in the decision. This permit will be issued or denied under Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344). Comments should be mailed to:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Branch
ATTN: CESPL-CO-R-200201129-CJF
P.O. Box 532711
Los Angeles, California 90053-2325

Alternatively, comments can be sent electronically to: corice.farrar@usace.army.mil

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination- A preliminary determination has been made that an environmental impact statement is not required for the proposed work.

Water Quality- The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the California Regional Water Quality Control Board. Section 401 requires that any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance. The County has applied for a 401 certification from the San Diego Regional Water Quality Control Board (SDRWQCB).

Coastal Zone Management- The applicant is in the process of certifying that the proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management Program. The County has obtained consistency from the City of Dana Point for the ocean outlet maintenance activities of the proposed project and is awaiting approvals from the City for a determination on the project in its entirety.

Cultural Resources- The latest version of the National Register of Historic Places has been consulted and this site is not listed. This review constitutes the extent of cultural resources investigations by the District Engineer, and he is otherwise unaware of the presence of such resources.

Alteration of the natural surroundings occurred when the outlet structure and channel originally were built. It is assumed that at the time of construction of these outlets a cultural resource assessment was performed. There have been no recent findings of native artifacts or other objects of cultural significance that would preclude any of the proposed work within the concrete channel, adjacent railroad right-of-way, or along the beach. Because the proposed activities consist of construction and maintenance within existing structures and previously developed areas, no impacts to sensitive cultural resources are expected.

Endangered Species- The site provides low quality freshwater and beach habitat for shorebirds. As stated in its Notice of Intent letter, dated November 27, 2002, the U.S. Fish and Wildlife Service (FWS) determined that the proposed project is not likely to adversely affect federally listed species, or their critical habitat. Therefore, formal consultation under Section 7 of the Endangered Species Act will not be required at this time. Our final determination relative to project impacts and the need for any additional special conditions is subject to continued coordination with FWS.

Magnuson-Stevens Fishery Conservation and Management Act (Act) - Essential Fish Habitat (EFH) - This notice initiates the EFH consultation requirements of the Act. Based on the information provided by the County of Orange and Tetra Tech, the Corps has made a preliminary determination that the activities described herein are not expected to adversely affect EFH or federally managed fisheries in California waters. The applicant has proposed to schedule work in tidally influenced areas to avoid any grunion runs that may occur at this location during March through August. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and in coordination with the National Marine Fisheries Service (NMFS).

Public Hearing- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

The Prima Deshecha channel is an urbanized channel through much of the cities of San Clemente and San Juan Capistrano and it outlets in the city of Dana Point. The ocean outlet consists of a trapezoidal concrete channel that empties to a rock revetment when it reaches the beach. There is a wooden bulkhead structure constructed on the north side of the outlet that protects a single-family residence and a private athletic facility exists south of the outlet. During the dry weather months, bacteria levels in the surf zone frequently exceed State standards and Poche Beach was posted 60% of the year in 2000 and for most of August and September 2001. Furthermore, during the winter months sand accumulates and obstructs the outlet causing flows to drift across the beach and impact the athletic facility.

OCPFRD proposes to collect, filter, and disinfect 700,000 gallons per day (500 gpm) of dry-weather urban runoff from the M01 storm channel (Prima Deshecha) at its outlet. The applicant requires a permit to install two removable dam structures, a discharge outlet/energy dissipater structure, in-channel filters, and to perform grading of the sand at the ocean outlet to eliminate an existing scour pool.

The treatment system would be operational from April 15 through October 15, annually. The water would be diverted into a proposed treatment system adjacent to the channel using an 22-inch tall sandbag diversion berm and a 5-foot tall steel tidal barrier dike with PVC membrane on the ocean side would be located at the channel outlet to prevent ocean water from entering the system. The treated water would be conveyed through a pipe located along the bulkhead adjacent to the channel and discharged at a proposed discharge outlet/energy dissipater located at the end of the bulkhead. Additionally, the applicant proposes to move approximately 1,250 cubic yards of existing beach sand using a bulldozer or other equipment to fill the scour pool for the dry weather season.

For the rainy season, the dam structures and filters would be removed and the County would realign the outlet flow perpendicular to the shoreline by excavating a trapezoidal channel in the sand, as described in the Project Description for the Ocean Outlet Maintenance Project (200200543-CJF), and herein. The outlet would be maintained at approximately 115 feet in length, to a depth of five feet, with a base width of less than 50 feet to re-establish the shortest distance from the outlet to the ocean. Earthwork would consist of excavating approximately 1,384-cubic yards, +/- 140-cubic yards, of sand, with an estimated impact of approximately 0.132-acre (5,750-square feet). It is estimated that any one maintenance event would take no longer than one day to complete. Removed sand would be placed on adjacent beach above the MHHW mark. The flood control right-of-way map for this facility shows a 20-foot wide drainage easement reserved over private property.

The proposed construction of the tidal barrier, diversion berm, outlet discharge/energy dissipater structure, filters, and outlet re-shaping are expected to occur within tidally influenced portions of the channel, and as such are regulated under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. The ocean outlet requires routine maintenance, on a semi-annual basis, in order to maintain their structural integrity, proper conveyance of flow, and minimization of impacts to coastal recreation and resources. Therefore, the Corps is evaluating a programmatic Regional General Permit (RGP) for the maintenance of this and several other ocean outlets (200200543-CJF).

Biological Resources

Jurisdictional Waters of the U.S., including Wetlands. The channel and ocean outlet are considered to be located within jurisdictional non-wetland "waters of the United States." Given the dynamic nature (i.e., changing seasonally and year to year) of the resources, an assessment of resources will be performed prior to scheduled maintenance to distinguish sensitive areas that need to be avoided during maintenance.

Sensitive Animal or Plant Species. The trapezoidal channel and ocean outlet to be affected are without vegetation and habitat requirements for the presence of sensitive plants or animals. Habitat within the outlet lies along a gradient of changing salinity. The upper reach of the outlet allows for minimal habitat due to existing concrete-lined channel bottom and lack of sediment. The concrete lining of the outlet ends at the sandy beach where vegetation is minimal or non-existent, making for poor habitat suitability. Non-threatened shorebirds such as willets (*Catoptrophorus semipalmatus*), black necked stilts (*Himantopus mexicanus*), killdeer (*Charadrius vociferus*), and snowy egrets (*Egretta thula*) may use the non-vegetated shallow waters of the outlets as foraging habitat, but nesting is highly unlikely.

No federally listed species are known to nest within the project site's vicinity; however, the potential exists for the presence of other endangered or threatened species at or near the ocean outlet. Specifically, species such as the western snowy plover (*Charadrius alexandrinus nivosus*), light-footed clapper rail (*Rallus longirostris levipes*), and California least tern (*Sterna antillarum browni*) have a low probability of being found at the ocean outlet facility or within the project area where shallow water foraging is available. However, a detailed search of the California Natural Diversity Data Base (completed for 200201129-CJF) revealed that there are no known occurrences of these species within the vicinity of the proposed outlet (State of California Resources Agency, January 2000).

No eelgrass (*Zostera marina*) patches were detected within the project area. Eelgrass-vegetated areas function as important habitat for a variety of fish and other wildlife. Eelgrass is typically found within tidal habitats where the water is shallow or relatively clear. The presence of eelgrass indicates a relatively healthy ecosystem and provides nursery habitat and shelter from predation for several marine fish species.

Proposed Impacts

Preliminary estimate of impacts associated with the installation of the removable structures and the sand shaping at Prima Deshecha aka Poche Beach is 0.132 acres.

Additional Project Information

Purpose and need.

For the purpose of the Section 404(b)(1) alternatives analysis (40 CFR 230), the Corps has determined that the basic project purpose is to improve water quality at the Poche Beach ocean outlet and to reduce the number of beach closures for recreation at that location, both are water-dependent activities. The overall project purpose is defined as: To implement a comprehensive water quality improvement program at the Poche Beach ocean outlet, in order to ensure adequate water quality and flood protection to areas adjacent to the beach.

Alternatives considered.

No Action. The no action alternative would result in no diversion of low flows to a treatment system and the scour pool would remain during dry weather season. The condition of elevated bacteria indicator levels in the surf zone and beach postings may persist and continue to pose a health risk to the public. The routine maintenance activities proposed for the ocean outlet under separate review for a programmatic Regional General Permit (200200543-CJF) could go forward regardless of the treatment system.

Alternative 'A': Installation of Diversion Structures for Treatment System without Reshaping the Ocean Outlet to Eliminate the Scour Pool. Alternative 'A' would result in the installation of the removable diversion structures for the treatment system without the recontouring of the beach for dry season fill of the scour pool. Without reshaping of the outlet and beach to eliminate the scour pool, the tidal barrier may be less effective at keeping the ocean water from entering the treatment system. Although with a diversion of low flows the scour pond may naturally become reduced in size during the dry season, the ocean tidal and wave influences would remain and a scour pool would likely exist. Furthermore, the treatment system by itself may realize some improvement in surf zone water quality by treating the contaminated low flows from the channel, but would not address any contamination associated with birds using the scour pool. Thus, the condition of elevated bacteria indicator levels in the surf zone and beach postings may persist and continue to pose a health risk to the public. The routine maintenance activities proposed for the ocean outlet under separate review for a programmatic Regional General Permit (200200543-CJF) could go forward regardless of the treatment system.

Alternative 'B': Elimination of Scour Pool without Diversion Structures for Treatment System. Elimination of the scour pool without diversion of low flows is infeasible because of the continual abandoned urban runoff flows in the channel to the ocean outlet.

Alternative 'C': Offsite. Given that the Regional Water Quality Control Board has proposed that Prima Deshecha be listed as an impaired waterbody for WARM and WILD beneficial uses, per Section 303(d) of the Clean Water Act, an alternative treatment system or Best Management Practices located upstream may address upstream problems, but may not address contamination at the outlet.

Minimization Measures and Proposed Mitigation.

The three main activities, minor dredging, realignment of flow, and diversions, would be performed in areas that have been historically maintained and consist primarily of concrete lined outlet spillway and rock revetment. Impacts would be minimized through the use of pre-existing access routes to the project site(s), proper storage of equipment and machinery, and avoidance of grunion runs at this location. The proposed activities, including seasonal recontouring and placement of the removable dams and low flow discharge outlet, are not anticipated to substantially alter the channel or outlet structure or function. No wetlands are located at the site.

Due to the limited nature of this activity and minimal impacts on jurisdictional waters, no compensatory mitigation has been proposed by the applicant. However, related to the maintenance of the ocean outlet (200201129-CJF), it is possible that mitigation requirements be proposed based on the amount of impact. In the case that mitigation is required, the County of Orange would utilize credits from its Santa Ana River Arundo Removal Mitigation Bank.

Other relevant information.

The County of Orange has prepared an Ocean Outlet Maintenance Manual (December 28, 2001, revised April 4, 2002). The manual is intended to serve as a guide for maintenance of County of Orange-owned ocean outlet facilities and provide baseline maintenance data that may be utilized in future projects. This plan includes sections on water quality and best management practices. The County will employ a water quality monitoring program at the serviced outlet to ensure that the highest water quality standards are maintained. The outlet is located within heavily used recreational beaches and oceans waters, and the County recognizes the importance of keeping these areas open to public use. Routine maintenance of the outlet structures minimizes the impacts the outlet discharges have on the adjacent coastal water quality. Routine maintenance also maintains tidal flow to the Talbert Marsh and other adjacent wetlands, providing proper nutrient cycling and flushing.

Monitoring of water quality will include the collection of water samples from a project site 48 hours before the start of work and again after the completion of work. The samples will be tested for Total Suspended Solids, turbidity, total coliform, fecal coliform, and enterococcus groups of bacteria. The results of the sampling and overall water quality monitoring program will be included in the annual monitoring report on maintenance activity. In the case that the standards for water quality are exceeded, warnings will be posted prior to the commencement of maintenance activities and the results will be presented in the annual report. The breaching of a given sand shoal shall not occur until results of the water quality testing are announced and proper posting has occurred. Prior to breaching any shoal to allow proper drainage of an outlet's flow to the ocean, any trash found floating on the surface of the impounded water will be skimmed and disposed of.

Related, proposed projects in Orange County.

Corps No. 20020543-CJF. Ocean Outlet Maintenance Projects. County of Orange. This proposes to develop a programmatic Regional General Permit for routine maintenance at eight ocean outlets, including the Prima Deshecha/Poche Beach outlet. No permit has been issued as of the date of this public notice.

The Corps will evaluate the proposed water diversion and outlet recontouring project under both scenarios, with and without the maintenance project at Poche Beach.

Proposed Special Conditions.

1. The County shall perform an assessment of biological resources prior to conducting scheduled maintenance to distinguish sensitive species and areas that need to be avoided during maintenance. The County shall submit the results of the assessment to the Corps for approval at least 30 days before commencing maintenance activities.
2. Work performed within the tidally influence areas during March through August will be done in a manner to avoid any grunion runs that occur on site.
3. When performing any dredging activity in or near the outlets, all excavated material will be distributed on an adjacent beach above the mean high water mark.
4. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

For additional information, please call Corice J. Farrar of my staff at (213) 452-3296. This public notice is issued by the Chief, Regulatory Branch.